

71 FR 70739, December 6, 2006

A-570-890
NSR: 6/24/04-6/30/05
Public Document
IA/NME/VIII: LA/HS

November 21, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the New Shipper Reviews of
Wooden Bedroom Furniture from the People's Republic of China
covering the period June 24, 2004 through June 30, 2005

SUMMARY

We have analyzed the comments of interested parties in the semi-annual new shipper reviews of wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC"). The period of review ("POR") covers June 24, 2004, through June 30, 2005. As a result of our analysis of these comments, we have made changes to our margin calculations. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Petitioners, American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721; UBC Southern Council of Industrial Workers Local Union 2305; United Steel Workers of America Local 193U; Carpenters of Industrial Union Local 2903; and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991 ("Petitioners") and Respondents, Landmark Furniture Ltd. ("Landmark") and Meikangchi (Nantong) Furniture Company Ltd. ("Meikangchi"), producers and exporters of the subject merchandise, were the only interested parties to comment on the preliminary results of review. The remaining respondent, Shenyang Kunyu Wood Industry Co., Ltd. ("Kunyu") did not provide any comments. Below is the complete list of the issues that were raised in these briefs:

- Comment 1: Use of Financial Statements of Evergreen International Limited for Calculation of the Surrogate Financial Ratios
- Comment 2: Use of Financial Statements of Jayaraja Furniture Group for Calculation of the Surrogate Financial Ratios
- Comment 3: Exclusion of Certain Expenses from the Calculation of the Cost of Manufacturing and Selling, General, and Administrative Expenses
- Comment 4: Exclusion of Finished Goods Inventory from the Cost of Manufacturing

- Comment 5: Treatment of the Sale of Scrap Offset in the Surrogate Financial Statements
- Comment 6: Reclassification of Certain Labor Charges as Selling, General, and Administrative Expenses
- Comment 7: Omission of Depreciation Expenses from the Surrogate Financial Ratios
- Comment 8: Inclusion of Interest Income in the Calculation of Cost of Manufacturing
- Comment 9: Treatment of “Job Work Expenses” in the Calculation of Surrogate Financial Ratios
- Comment 10: Treatment of “Sawing Charges Expenses” in the Calculation of Surrogate Financial Ratios
- Comment 11: Treatment of “Wages to Staff” in the Calculation of Surrogate Financial Ratios
- Comment 12: Treatment of Certain Labor Costs in the Calculation of Surrogate Financial Ratios
- Comment 13: Inclusion of Packing Materials in Selling, General, and Administrative Expense Using a Surrogate Company’s Financial Statements
- Comment 14: Reclassification of “Diesel & Petrol” Expense as Selling, General, and Administrative Expense

BACKGROUND

On July 6, 2006, the Department of Commerce (“the Department”) published its preliminary results of the 2004-2005 semi-annual new shipper reviews and rescission of one new shipper review of the antidumping order on WBF from the PRC. See *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of 2004-2005 Semi-Annual New Shipper Reviews and Notice of Final Rescission of One New Shipper Review*, 71 FR 38373 (July 6, 2006) (“Preliminary Results”). On August 7, 2006, Petitioners and Meikangchi submitted case briefs. On August 14, 2006, Petitioners and Landmark submitted rebuttal briefs. No other parties provided comments. On September 27, 2006, the Department published a notice extending the time limits for the final results of review until November 21, 2006. See *Extension of Time Limits for Final Results of New Shipper Reviews of Wooden Bedroom Furniture From the People’s Republic of China*, 71 FR 56475 (September 27, 2006).

DISCUSSION OF THE ISSUES

Comment 1: Use of Financial Statements of Evergreen International Limited for Calculation of the Surrogate Financial Ratios

Petitioners argue that by using Evergreen International Limited's ("Evergreen") financial statements the Department has distorted the financial ratio calculations because the majority of Evergreen's business is the manufacturing of leather garments and because the record contains insufficient evidence for the Department to allocate the company's profit and expenditures between its leather goods and furniture operations. Petitioners base their argument on determinations where the Department has stated that it does not use financial statements from a producer where a significant portion of its business is not related to merchandise meeting the physical description of merchandise subject to the scope of the order ("WBF"). See Notice of Final Determination of Sales at Less than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000), and accompanying Issues and Decision Memorandum at Comment 8 ("Apple Juice"); and Notice of Final Determination of Sales at Less than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 FR 38632 (July 25, 2001), and accompanying Issues and Decision Memorandum at Comment 4 ("Ammonium Nitrate").

Petitioners argue that Evergreen's financial statements indicate that its principal products and the majority of Evergreen's business sales were leather garments. Petitioners state that less than one quarter (by value) of the raw materials consumed were used by Evergreen's furniture division, while over three quarters were consumed by Evergreen's leather garments division. Petitioners contend that the production and sale of leather garments is the most important part of Evergreen's business, making the use of its financial statements improper.

Petitioners further contend that Evergreen's financial statements do not disaggregate the profits for its leather and furniture divisions and it would be improper for the Department to assume that the profit margin for producing and selling leather garments is exactly the same as that for producing and selling furniture. Additionally, Petitioners argue that Evergreen's financial statements also fail to allocate selling, general, and administrative ("SG&A") expenses between the leather and furniture divisions. According to Petitioners, because Evergreen's leather goods production is outsourced and its furniture division is an in-house operation, the furniture division would require greater usage of its SG&A expenses. Thus, Petitioners conclude that the Department cannot apply the same SG&A ratio for the whole company to Evergreen's furniture division.

Furthermore, Petitioners state that the Department should not have allocated all of the cartage and freight expenses from Evergreen's Schedule K (Manufacturing Expense) to the furniture division's material expenses when calculating materials, labor, and energy ("MLE") because raw material inventories for the skins used by the leather division already include the value of inbound freight charges. Petitioners contend that the Department's inability to disaggregate the

MLE expenses demonstrates that Evergreen's financial statements do not provide reliable information to derive surrogate financial ratios. Therefore, Petitioners assert that the Department should not use Evergreen's financial statements in calculating the financial ratios for the final results because the majority of Evergreen's operations is leather production.

Landmark argues that the Department should continue to rely on the financial statements of Evergreen because the Department rejected Petitioners' same arguments in the investigation of this case and found the financial statements to be sufficiently detailed to provide reliable surrogate ratios. See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004) ("WBF Investigation"), and accompanying Issues and Decision Memorandum at Comment 3. Landmark cites the Department's statement that Evergreen is a producer of WBF, not just a retailer or a trader, that outsources the majority of its leather goods production. Landmark concludes that Petitioners provided no evidence to warrant the Department deviating from its decision in its preliminary results. Therefore, Landmark asserts, the Department should reject Petitioners' arguments entirely.

Department's Position: We agree with Petitioners in part. We have determined that we have a significant pool of reliable surrogate financial statements from furniture producers on this record, and therefore, do not need to use financial statements from Evergreen. Although we were able to disaggregate the consumption of raw materials between the leather and furniture divisions, there is some concern that inability to properly allocate Evergreen's SG&A expenses and profit to merchandise that meets the description of the scope, could create distortions in the calculation of Evergreen's financial ratios.

Each antidumping investigation and review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately, based on information submitted for that review. See Sulfanic Acid from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702 (October 15, 1996), and accompanying Issues and Decision Memorandum at Comment 8 ("Sulfanic Acid"). In circumstances where the Department does not have the availability of multiple surrogate financial statements from producers of identical or comparable merchandise, the Department may find itself in a position where the best available information on the record is that of a producer of multiple products. In such circumstances, the Department might use that financial statement as the basis for the surrogate ratio calculations. However, in past cases, where we have had multiple surrogate financial statements available, we have similarly disregarded financial statements that also contain financial data for non-comparable merchandise. See Ammonium Nitrate. In a circumstance such as this one, and consistent with past practice, where the record contains complete and adequate financial statements from seven producers of comparable merchandise, there is no need for the Department to resort to the use of a surrogate financial statement for a producer whose operations are not primarily related to comparable merchandise.

Therefore, for these final results of review, we are not using Evergreen's financial statements in the calculation of the surrogate financial ratios. See Memorandum to the File from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager: Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum for the final Results of the Semi-Annual New Shipper Review, dated November 21, 2006 ("Factor Valuation Memorandum")). Finally, we note that Apple Juice, cited by Petitioners, is inapposite because in that case the Department did not use the surrogate company's financial statements because the surrogate company was primarily a service company and not a manufacturer and the company revenues were primarily derived from service-oriented rather than manufacturing operations.

Comment 2: Use of Financial Statements of Jayaraja for Calculation of the Surrogate Financial Ratios

Petitioners contend that the Department improperly used the Jayaraja Furniture Group's ("Jayaraja") financial statements when it derived financial ratios in the preliminary results because Jayaraja's financial statements are incomplete, unreliable, and unusable. Petitioners argue that the financial statements consist of only two pages: the balance sheet and the profit and loss statement. Petitioners contend that it is the Department's well-established practice to reject such incomplete financial statements. See Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 3 ("Silicomanganese from Kazakhstan"). Petitioners add that Jayaraja's financial statements do not include any notes, schedules, auditor's opinion, or director's statement and contend that without schedules and notes to the financial statements, the Department cannot interpret the data presented in a company's profit and loss statement or balance sheet. Noting that Jayaraja's financial statements report zero depreciation in the profit and loss statement, Petitioners maintain that without the depreciation schedule or listing of fixed assets, the Department cannot interpret the zero depreciation in the profit and loss statement or determine if Jayaraja is even a manufacturing company. Petitioners further argue that even if Jayaraja was a rare manufacturing company with zero depreciation, it would represent an anomaly and, therefore, an inappropriate source for deriving surrogate financial ratios. Also, Petitioners assert that the Department cannot determine whether Jayaraja's interest revenues are short-term or long-term, nor identify interest-bearing assets. Therefore, Petitioners argue that the Department should not use Jayaraja's financial statements in calculating the financial ratios for the final results.

Landmark argues that the Department should continue to rely on the financial statements of Jayaraja. Landmark states that the Department rejected Petitioners' same arguments in the WBF Investigation and found the financial statements to be complete and sufficiently detailed to provide reliable surrogate ratios. Landmark cites WBF Investigation to argue that Jayaraja is a furniture manufacturing company and the absence of depreciation expenses is not a reason to reject the company's data. Landmark argues that Petitioners did not provide any evidence to warrant the Department deviating from its analysis and methodology as determined in its

preliminary results. Therefore, Landmark asserts, the Department should reject Petitioners' arguments.

Department's Position: It is the Department's practice to disregard incomplete financial statements as a basis for calculating surrogate financial ratios where "...the statement is missing key sections, such as sections of the auditor's report, that are vital to our analysis and calculations." See Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001), and accompanying Issues and Decision Memorandum at Comment 2 ("Rebar from Belarus"). In Rebar from Belarus, the Department chose to use the financial statements of a surrogate company that had usable financial statements and disregard the other set of financial statements which the Department deemed incomplete and, therefore, inappropriate for use as a basis for surrogate financial ratios. In the instant case, we agree with Landmark that the lack of a positive number for depreciation is not by itself a sufficient reason to disregard financial statements. See WBF Investigation at Comment 3 (company's amount for depreciation does not necessarily indicate the extent to which a company is a producer because these assets could be fully amortized, especially if the company shows raw materials and labor consumed). In the current review, upon further examination of Jayaraja's financial statements, we have determined that Jayaraja's financial statements lack not a positive number for depreciation, but more significantly, they are missing an auditor's report, which was sufficient cause to disregard surrogate financial statements in Rebar from Belarus, as well as schedules, the auditor's opinions and notes to the financial statements. Thus, our finding with respect to Jayaraja's financial statements that they are inappropriate for use in this review is consistent with Silicomanganese from Kazakhstan where we disregarded surrogate financial statements because they lacked certain key reports (e.g., schedules, notes), indicating incomplete financial statements.

The fact that we used Jayaraja's financial statements in the WBF Investigation does not mean that we can not disregard the company's statements for purposes of this review. As we stated in the past, each antidumping investigation and review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately based on information submitted for that review. See Sulfanic Acid.

In reviewing the arguments submitted in these reviews and the Jayaraja financial statements, we determine, for example, that Jayaraja's financial statements do not provide sufficient detail for the Department to allocate Jayaraja's expenses among direct expenses, overhead, and SG&A with any level of certainty. In these reviews, we have a number of other surrogate companies, all of which are furniture manufacturers; therefore, for the purposes of calculating financial ratios, the use of Jayaraja's financial statements is not necessary. Consequently, for the final results, we have disregarded Jayaraja's financial statements in the calculation of the surrogate financial ratios. See Factor Valuation Memorandum.

Comment 3: Exclusion of Certain Expenses from the Calculation of the Cost of Manufacturing and Selling, General, and Administrative Expenses

Petitioners argue that the Department made errors in its financial ratio analysis of Indian Furniture Products, Ltd. (“IFP”) 2004-2005 financial statements. Petitioners contend that IFP’s depreciation expenses were not included in the factory overhead numerator and interest expenses were not included in the SG&A numerator in the calculation of IFP’s surrogate financial ratios. Petitioners assert that the Department should include depreciation and interest expenses in the numerator of factory overhead and SG&A, respectively.

No other party commented on this issue.

Department’s Position: We agree with Petitioners. In the preliminary results, the Department inadvertently omitted IFP’s 2004-2005 depreciation expense in calculating factory overhead and its 2004-2005 interest expense in calculating SG&A. Therefore, for the final results, we have revised IFP’s 2004-2005 financial ratios to include depreciation in the factory overhead numerator and interest expenses in the SG&A numerator in the calculation of IFP’s financial ratios. See Factor Valuation Memorandum.

Comment 4: Exclusion of Finished Goods Inventory from the Cost of Manufacturing

Petitioners argue that the changes in “finished goods” inventory in IFP’s 2004-2005 financial statements relate to cost of goods sold rather than current period costs (i.e., current cost of Materials). Petitioners contend that only the changes in “work in progress” inventory should be included in the calculation of cost of materials.

Landmark argues that Petitioners have no record evidence to support their argument. Landmark maintains that in the absence of detailed data that indicates that current costs are not reflected in “finished goods” inventory, no adjustment to the calculation is proper or necessary.

Department’s Position: We agree with Petitioners. Consistent with our practice, in these final results, the Department will exclude from the calculation of surrogate financial ratios any increases and/or decreases in finished goods inventory, as well as increases or decreases in the broader categories of stock or inventory where there is insufficient detail regarding the content of these categories to make such adjustments. See Malleable Iron Pipe Fittings From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 76234, 76238 (December 23, 2005). We find that IFP’s 2004-2005 financial statements contain sufficient detail to enable the Department to differentiate between the changes in “finished goods” and “work in progress” inventories which will enable the Department to include only changes to the “work in progress” inventory in the calculation of cost of materials. See Factor Valuation Memorandum. We excluded the changes in “finished goods” inventory from the material cost calculation of IFP’s 2002-2003 financial statement and Raghbir Interiors Pvt. Ltd. (“Raghbir”) financial statement in our preliminary results and in the WBF Investigation. In

addition, we agree with Petitioners that changes in “work in progress” inventory should be in the calculation of cost of materials, in order to capture all direct expenses comprising the surrogate company’s cost of manufacturing. This approach is consistent with our treatment of the IFP 2002-2003 financial statements in the WBF Investigation. Therefore, we have excluded the changes in “finished goods” inventory from the material cost calculation and included the changes in “work in progress” from IFP’s 2004-2005 financial statements in our calculation of material costs.

Comment 5: Treatment of the Sale of Scrap Offset in the Surrogate Financial Statements

Petitioners state that miscellaneous income from sales of scrap should be treated as an offset to the total cost of materials in IFP’s 2002-03 and 2004-05 financial statements. According to Petitioners, IFP’s manufacturing operations relate only to furniture and, thus, the sale of scrap should be an offset to the cost of materials. To support their position, Petitioners cite Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review, 69 FR 42039 (July 13, 2004) (“Brake Rotors”), and accompanying Issues and Decision Memorandum at Comment 1; and Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 30818 (June 8, 1999) (“SSSS from Mexico”), and accompanying Issues and Decision Memorandum at Comment 26, where the Department offset the cost of materials by the sale of scrap.

Landmark contends that there is no record evidence to confirm that the sale of scrap is related to the production of furniture. Thus, Landmark argues that no adjustment to the Department’s calculation is warranted.

Department’s Position: We disagree with Petitioners. It is not consistent with the Department’s practice to treat revenue from the sale of scrap as an offset to the cost of materials of a surrogate company. Schedule 12 of IFP’s 2002-2003 and 2004-2005 financial statements list “scrap sales” as “Other Income” which indicates that the sale of scrap is revenue. Moreover, the Department generally decides to deduct scrap from the cost of materials only when it is reintroduced into the production. See Guangdong Chemicals Import & Export Corporation v. United States, Court 05-00023, Slip Op. 06-142 (September 18, 2006). Because IFP’s financial statements indicate that its sale of scrap is revenue, we will not deduct it from the cost of materials. Furthermore, offsetting IFP’s cost of materials would unnecessarily reduce the cost of materials, and there is no evidence on the record to confirm that this revenue is spent on purchasing raw materials or has any relevance to the cost of manufacturing. Therefore, for the final results, we have excluded sale of scrap offset from the cost of materials calculation in IFP’s 2002-2003 and 2004-2005 financial statements.

As we have explained in the past, because we do not know all of the components of the various line items in the surrogate financial statements, adjusting those statements may not make them

any more accurate and indeed may only provide the illusion of precision. See Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation, 60 FR 16440, 16446-7 (March 30, 1995). The Department's practice has been affirmed by the Court of International Trade ("CIT"). See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1246, 1250-1251 (CIT 2002). It is impossible for the Department to further dissect the financial statement of a surrogate company as if the surrogate company were an actual interested party when the Department has no authority to either ask questions or verify the information from surrogate company. It is for this reason that the Petitioners reliance on SSSS from Mexico is inapposite. That case dealt with the respondent's own data and production experience which could be verified. In this case IFP is a surrogate company and the only audited information we have about its business practices are the financial statements. Schedule 12 of IFP's 2002-03 and 2004-05 financial statements list "scrap sales" as "Other Income" which indicates that IFP treats the sale of scrap as revenue. The Department has no information on the record to demonstrate otherwise. Furthermore, Petitioners' assertion that all scrap sales relate to WBF production is a supposition which cannot be substantiated by the evidence on the record.

Petitioners cite Brake Rotors, as an example of a case where the Department offset the cost of materials by the value of the scrap sales in calculating the respondent's cost of manufacturing. The Brake Rotors case is inapposite because in that review we were making the adjustment to the respondent's normal value rather than adjusting the surrogate financial ratios. Notwithstanding the Brake Rotors case, which was decided based upon the specific facts on the record of that case, the Department sees no reason in these new shipper reviews to depart from our long-standing practice of accepting surrogate financial statements in toto and not making adjustments to them that might not increase the accuracy of the result. Therefore, for the final results, we have not adjusted the cost of materials in IFP's 2002-03 and 2004-05 financial statements for the scrap sale value.

Comment 6: Reclassification of Certain Labor Charges as Selling, General, and Administrative Expenses

Petitioners state that the Department categorized "Salaries, wages, bonuses, and allowances" and "Labour charges" from IFP's 2004-2005 financial statements as labor for use in the denominator of IFP's cost of manufacturing ratios. Petitioners argue that IFP's 2004-2005 financial statements categorized "Labour charges" as SG&A which demonstrates "Labour charges" cannot be construed as direct labor. Petitioners argue that IFP's "Salaries, wages, bonuses, and allowances" are IFP's manufacturing direct labor while "Labour charges" are its SG&A expenses. Petitioners state that the Department should move "Labour charges" into either SG&A or factory overhead in calculating IFP's 2004-2005 financial ratios.

Landmark argues that Schedule 13 "Manufacturing and other expense" in IFP's 2004-2005 financial statements does not indicate whether "Labour charges" is an SG&A item or factory overhead item. Landmark contends that expenses incurred for temporary or contract workers, as opposed to regular employees, are commonly presented as a separate line item from "payments to

and provisions for employees.” Thus, Landmark asserts that no adjustment to IFP’s financial ratios are warranted.

Department’s Position: We agree with Petitioners that “Labour charges” are listed as SG&A expenses along with “Bank charges,” “Rent,” etc. See Schedule 13 in IFP’s 2004-2005 financial statements. As such, “Labour charges” should be included with the other SG&A expenses. Additionally, we agree with Petitioners that although IFP’s “Labour charge” is a manufacturing expense, it is not direct labor because IFP’s direct labor items are included in “Salaries, wages, bonus, and allowance.” Because IFP listed “Labour charges” in Schedule 13 “Manufacturing and other expense,” we have determined that “Labour charges” are not direct wages. Therefore, for the final results, we have revised IFP’s 2004-2005 financial ratio calculations and moved “Labour charges” from the labor portion of the cost of manufacturing to factory overhead. See Factor Valuation Memorandum.

Comment 7: Omission of Depreciation Expenses from the Surrogate Financial Ratios

Regarding the financial statements of Raghbir, Petitioners state that the Department only accounted for half of the depreciation of the line items “Furniture & Fixtures” and “Computers” in its factory overhead calculation. Petitioners argue that the Department should account for the remaining portion of Raghbir’s depreciation in the calculation of the surrogate financial ratios.

Landmark argues that the Department properly accounted for only half of Raghbir’s depreciation expenses because factory overhead is intended to capture only the depreciation expense associated with productive assets. According to Landmark, “Furniture and Fixtures” and “Computers” depreciation relate equally to both productive and non-productive assets. Thus, Landmark contends that the Department should not adjust its calculations to capture Raghbir’s remaining depreciation expense.

Department’s Position: We agree with Petitioners. We disagree with Landmark that it is proper to apply half of the depreciation of “Furniture and Fixtures” and “Computers” to Raghbir’s non-productive assets. In the preliminary results, the Department applied only 50 percent of Raghbir’s depreciation expense with regard to the line items (depreciation of “Furniture and Fixtures” and “Computers”) to factory overhead and did not apply the remaining 50 percent to any other category. Upon further examination, we determine that the remaining 50 percent of depreciation for “Furniture and Fixtures” and “Computers” is unaccounted for, and that Raghbir’s financial statements do not provide any indication of where the remaining depreciation should be placed. Because it is depreciation, which is typically associated with productive assets and we have no other information on the record, we have determined to account for the remaining 50 percent by including the remaining portion of Raghbir’s depreciation expense for “Furniture and Fixtures” and “Computers” in our calculations of Raghbir’s factory overhead in the final results. See Factor Valuation Memorandum.

Comment 8: Inclusion of Interest Income in the Calculation of Cost of Manufacturing

Petitioners state that although the surrogate financial statements did not indicate whether the interest income was short-term or long-term, the Department offset SG&A expenses with interest income in the calculation of D'nD Fine Furniture (“D'nD”), Raghbir, Evergreen, and Jayaraja’s financial ratios. Petitioners argue that the Department’s practice is to offset SG&A interest expenses with interest revenue only if the financial statement clearly indicates that the income was short-term in nature. Petitioners contend that it is the Department’s practice not to look behind the surrogate financial records to decide whether to offset SG&A expenses with interest revenue. See e.g., Brake Rotors from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review, 63 FR 51898 (September 29, 1998); Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People’s Republic of China, 65 FR 33805 (May 25, 2000), and accompanying Issues and Decision Memorandum at Comment 5; Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, 62 FR 61964, 61970 (November 20, 1997); Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People’s Republic of China, 67 FR 6482 (February 12, 2002) (“ARG from the PRC”), and accompanying Issues and Decision Memorandum at Comment 24; and Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 7 (“Isocyanurates”). Therefore, Petitioners contend that the Department should not offset SG&A expenses for these companies with any interest revenue because the surrogate financial statements of these companies do not indicate whether their assets bore long-term or short-term interest.

Landmark argues that the Department properly offset the SG&A expenses of D'nD, Raghbir, Evergreen, and Jayaraja with the full amount of short-term interest income. Landmark states that Petitioners provided no record evidence that would warrant the Department changing its methodology as applied in the WBF Investigation. Thus, Landmark contends that the Department should reject Petitioners’ arguments for the final results.

Department’s Position: We agree with Petitioners. The Department’s practice is to disaggregate interest income between short-term and long-term income and only offset SG&A with short-term interest income. See WBF Investigation at Comment 3, ARG from the PRC at Comment 24; and Isocyanurates at Comment 7. Upon further review of the surrogate financial statements of D'nD and Raghbir, the Department found that these companies did not indicate whether their interest income was short-term or long-term. As stated in Isocyanurates, the Department will reduce interest and financial expenses by amounts for interest income only if the surrogate financial statements reported that interest income was short-term in nature. Thus, because none of the surrogate companies (i.e., D'nD and Raghbir) reported in their financial statements that their interest income was short-term, we have determined, for the final results, not to offset SG&A with any interest revenue. See Factor Valuation Memorandum. Also, because we have determined not to use Jayaraja’s and Evergreen’s financial statements,

classification of interest income is moot with regard to Jayaraja and Evergreen. See Comments 1 and 2 above.

Comment 9: Treatment of “Job Work Expenses” in the Calculation of Surrogate Financial Ratios

Citing the WBF Investigation at Comment 3, Meikangchi states that “job work expenses” from the Fusion Design Private, Ltd.’s (“Fusion”) financial statement should be included as labor in the MLE denominator in the surrogate financial ratios calculation. Meikangchi claims that the Department’s reclassification of “job work expenses” as an overhead expense in these reviews resulted in a distortion of the ratios, which increased the factory overhead ratio from 1.67 percent to 51.17 percent. Meikangchi contends that in the preliminary results, the Department did not articulate a policy shift in the treatment of “job work expenses,” nor would such a policy shift be justified because “job work expenses” represent direct labor expenses. Meikangchi argues that the Department should either reclassify “job work expenses” as labor in the denominator of MLE in the final results, or explain why it has departed from its prior treatment of this expense from the same financial statement.

Petitioners did not comment on this issue.

Department’s Position: We agree with Meikangchi. In the preliminary results, we classified “job work expenses” as factory overhead in the calculation of Fusion’s financial ratios. This decision was based on misinterpretation of items as an indirect labor cost and our recent practice of excluding indirect labor and non-wage labor costs from the total of MLE and classifying them as factory overhead. See Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Administrative Duty Review, 71 FR 2905 (January 18, 2006) (“Tables and Chairs”), and accompanying Issues and Decision Memorandum at Comment 1B; and Polyvinyl Alcohol from the People’s Republic of China: Final Results of Antidumping Administrative Duty Review, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 8. However, upon further examination of Fusion’s financial statements, we have determined that Fusion’s “job work expenses” represent direct production labor and should be treated as labor in the calculation of MLE. We based our determination on the fact that Fusion’s “job work expenses” were classified as a separate line item under total expenses, distinct from Schedule H “Administrative and General Expenses,” on Fusion’s profit and loss statement. Therefore, for the final results, consistent with our treatment of this item in WBF Investigation, we have classified Fusion’s “job work expenses” in the labor portion of MLE. See Factor Valuation Memorandum.

Additionally, upon further examination of Fusion’s financial statements we found that the only remaining labor item in Fusion’s financial statements is “salaries” which is listed as a line item in Fusion’s administrative and general expenses. Consistent with our practice as discussed in Tables and Chairs and Fusion’s own treatment of “salaries” in its financial statements, for the

final results, we have treated Fusion’s “salaries” as manufacturing overhead rather than as an MLE expense. See Factor Valuation Memorandum.

Comment 10: Treatment of “Sawing Charges” in the Calculation of Surrogate Financial Ratios

Meikangchi contends that in the final determination of the WBF Investigation, the Department classified D’nD’s “sawing charges” as labor; however, in the preliminary results, the Department reclassified “sawing charges” as factory overhead. Meikangchi states that the Department’s reclassification of D’nD’s labor items including “sawing charges” resulted in an increase of the factory overhead from 7.63 percent (factory overhead rate from the investigation) to 23.84 percent. Meikangchi argues that the “sawing charges” are clearly manufacturing-related charges and not factory overhead. Meikangchi asserts that the Department should move “sawing charges” from factory overhead to the labor portion of MLE.

Petitioners did not comment on this issue.

Department’s Position: We disagree with Meikangchi. Upon further examination of D’nD’s Schedule H, we have determined that D’nD’s financial statements do not provide any explanation that would allow the Department to ascertain from D’nD’s financial statements whether “sawing charges” are direct labor charges. D’nD’s financial statements simply list “sawing charges” as a manufacturing expense. After thoroughly examining D’nD’s financial statements, we note that D’nD’s manufacturing expenses also include such non-labor related items as generator fuel and freight inward indicating that not all items under manufacturing expenses are direct labor. We note that in the WBF Investigation we treated “sawing charges” as labor-related (*i.e.*, indirect labor) charges and included all labor-related items in labor. However, since the WBF Investigation, the Department has modified its practice with respect to the treatment of indirect labor items and now treats them as manufacturing overhead. Therefore, for the final results, because we consider “sawing charges” to be indirect labor, we have continued to treat “sawing charges” as a factory overhead expense. See Factor Valuation Memorandum.

Comment 11: Treatment of “Wages to Staff” in the Calculation of Surrogate Financial Ratios

Meikangchi contends that in the final determination of the WBF Investigation, the Department classified D’nD’s line item “Wages to staff” as the labor portion of MLE, but in these preliminary results the Department reclassified “Wages to staff” as a factory overhead expense. Meikangchi argues that the Department must either explain this new treatment of “Wages to staff” or reverse the treatment of “Wages to staff” and put it back in the labor portion of MLE.

Petitioners did not comment on this issue.

Department's Position: We agree with Meikangchi. Upon further examination of D'nD's financial statements, we have determined that "Wages to staff" are direct production wages. We base our determination upon the fact that D'nD's financial statements list "Wages to staff" under manufacturing expenses and manufacturers typically list their production worker costs under manufacturing expenses. Therefore, for the final results, we have reclassified "Wages to staff" from overhead to the labor portion of MLE. See Factor Valuation Memorandum.

Comment 12: Treatment of Certain Labor Costs in the Calculation of Surrogate Financial Ratios

Meikangchi states that in the final determination of the WBF Investigation, the Department classified "salary & other benefit to staff" as labor in calculating D'nD's and Evergreen's financial ratios. Meikangchi notes that in the preliminary results the Department moved this expense from the labor portion of the MLE to factory overhead without any explanation or justification. Meikangchi cites the WBF Investigation and the Department's brief in litigation involving the WBF Investigation (Dorbest Limited et al. v. United States, CIT No. 05-0003), which states that "...because the statements lumped all employee-related benefits with the non-manufacturing labor, Commerce properly included all of the "salaries and other benefits" under MLE." Meikangchi argues that including these charges in the factory overhead in these reviews would contravene the Department's current litigation position on these exact same expenses before the CIT. Meikangchi contends that for the final results the Department should reclassify "salary & other benefit to staff" back to the labor portion of MLE.

Additionally, Meikangchi argues that the Department should either reclassify "ESI Expenses," "Provident Fund Expenses," and "Staff Welfare" for D'nD and "company contribution to PF and ESIC" and "staff welfare and medical benefits" for Evergreen as labor, or explain why it departed from its practice of classifying these expenses as labor from the WBF Investigation. See Memorandum to the File from Jon Freed through Robert Bolling Amended Final Determination Financial Ratio Memorandum: Wooden Bedroom Furniture from the People's Republic of China, dated December 27, 2004. Further, Meikangchi contends that the Department should conform its treatment of these expenses to the manner in which they were classified in the amended final determination of the investigation. Finally, Meikangchi states that it would be consistent with the Department's litigation position to reclassify these expenses as MLE.

Petitioners argue that Meikangchi inappropriately assumes that because nine of the Indian financial statements used in this new shipper review were from the record of the investigation, the Department must conform its new shipper financial ratios calculations to its investigation calculations. Petitioners maintain that the Tariff Act of 1930, as amended ("the Act"), makes clear that when determining normal value for companies from non-market economy countries, the valuation of factors of production "shall be based on the best available information regarding the values of such factors." See section 773(c)(1) of the Act. Further, Petitioners state that while the Department's analysis from the investigation may be informative, it is not binding in these new shipper reviews. See Sulfanic Acid at Comment 8.

Petitioners argue that the Department acted consistently with its practice of including employee benefits in factory overhead where “detailed and well-defined surrogate financial data permit {} the Department to easily segregate labor expenses” into (1) wages and (2) employee benefits. See Tables and Chairs at Comment 1B.

Petitioners argue against Meikangchi’s proposed inclusion of D’nD’s “Salary & Other Benefit to Staff” and Evergreen’s “Salary and Other Benefits” into labor expense because Petitioners state that any expense with “salary” in the description should not be defined as labor expense since “salary” is not a factory labor expense. Further, Petitioners contend that the financial statements of D’nD and Evergreen demonstrate that the reported costs for “Salary and Other Benefits to Staff” are not factory labor expenses.

Furthermore, Petitioners claim that D’nD’s financial statements list all of its manufacturing expenses under Schedule H, Cost of Goods Sold. Petitioners state that Schedule H contains a subheading entitled “Manufacturing Expenses,” and two manufacturing labor expenses are captured under line items “Job Work Charges” and “Wages to Staff.” Petitioners claim that D’nD lists its other personnel expenses in Schedule I, “Personnel Expenses.” Petitioners state that these expenses show the employee overhead costs for “ESI,” “Provident Fund,” “Staff Welfare,” “Salary & Other Benefits to Staff.” Thus, Petitioners conclude that because D’nD lists “Manufacturing Expenses” and “Staff Welfare” expenses in two separate schedules, and lists “Salary & Other Benefit to Staff” under a schedule distinct from “manufacturing expenses,” the financial statements demonstrate that “Salary & Other Benefit to Staff” is not a manufacturing expense. Also Petitioners assert that “Salary & Other Benefit to Staff” is an SG&A expense and “employee salaries and expenses” and should be treated as SG&A.

Moreover, Petitioners state that D’nD reports its “Administrative Expenses” in Schedule J, “Personnel expenses,” and its “Selling Expenses” in Schedule K, “Administrative expenses,” and that neither of these Schedules have staff and/or employee expenses. Therefore, Petitioners conclude that “Salary & Other Benefit to Staff” is where SG&A-related labor expenses are listed. Petitioners further argue that because D’nD categorizes its manufacturing labor under Schedule H, the “Salary & Other Benefit to Staff” line item in Schedule I must refer solely to SG&A-related labor expenses. Therefore, according to Petitioners, the Department properly determined not to include “Salary & Other Benefit to Staff” and “Staff Welfare” in the denominator of MLE.

Finally, Petitioners argue that Evergreen’s financial statements also have “Salary and Other Benefits” listed under Schedule L, Office Overheads. Petitioners maintain that, by contrast, Schedule K refers to “Manufacturing Expenses” and contains a line item for “wages.” Petitioners conclude that the Department properly removed salaries from the MLE denominator in preparing its calculation worksheets for Evergreen.

Department’s Position: We disagree with Meikangchi. Consistent with recent Department practice, we classified “salary & other benefit to staff,” “ESI expenses.” “Provident fund

expenses,” and “staff welfare” as manufacturing overhead in the preliminary results of this review. The International Labor Organization (“ILO”) Yearbook of Labour Statistics, which the Department uses for its expected PRC wage rate, defines wages and labor costs separately in Chapter 5B, “Wages:”

The concept of earnings, as applied in wages statistics, relates to remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.

See <http://laborsta.ilo.org/> (emphasis added).

The same publication, in Chapter 6, defines “Labour Costs” as including employee benefits:

For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers’ housing borne by employers, employers’ social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost. . . .

See Tables and Chairs at Comment 1B; Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum at Comment 3.

Therefore, the wages category (Chapter 5B) is exclusive of employee benefits such as pension and social security, while the labor cost category (Chapter 6) is inclusive of these employee expenses. The Department based its calculation of the regression-based expected PRC wage rate on data from Chapter 5B of the Yearbook of Labour Statistics. In the instant review, the detailed and well-defined surrogate financial data contained in the surrogate companies’ financial statements permitted the Department to easily segregate labor expenses into “Wages” (which corresponds to Chapter 5B of the ILO database and, therefore, to the Department’s expected PRC wage rate), and the other aforementioned labor costs (which are not included in the Department’s calculated PRC wage rate). Therefore, we have determined that classifying the relevant employee benefits categories as factory overhead is consistent with our regression-based expected PRC wage rate calculation and have done so for these final results. See Factors Valuation Memorandum.

Petitioners argue that the Department should include “salary & other benefit to staff” in D’nD’s

SG&A ratio because D'nD listed these expenses under Schedule I "Personnel expenses" which are separate from the "Manufacturing expenses" portion of Schedule H "Cost of Goods Sold." We note that Schedule I "Personnel expenses" are separate from Schedule J "Administrative expenses" which by Petitioners' own admission lists an employee-related expense, "Director remuneration." Upon further examination of D'nD's financial statements, we have determined that the expense "Director remuneration" is the only employee expense related to SG&A because there are no staff or other employee expenses shown in Schedules J or K. We also note that "ESI expenses," "Provident fund expenses," and "staff welfare" are also listed under "Personnel expenses." However, Petitioners did not argue that these expenses should be included in SG&A. The Schedule I "Personnel expenses" include all four employee expenses, none of which are part of "Manufacturing expenses;" nor are they part of "Administrative expense." Thus, we have not made any changes to our calculation of D'nD's financial ratios with regard to "salary & other benefit to staff," "ESI expenses," "Provident fund expenses," and "staff welfare" and we have continued to treat these four items as overhead expenses for these final results of review. Finally, because we have not used the Evergreen financial statements in our calculation of the surrogate financial ratios, the classification of the Evergreen financial items is moot and we have not addressed them here. See Comment 1.

Comment 13: Inclusion of Packing Materials in SG&A Using IFP's 2004-05 Financial Statements

Meikangchi states that in the preliminary results, the Department included the packing materials expense from IFP's 2004-2005 financial statements in the calculation of its SG&A expenses. Meikangchi notes, however, that the Department excluded IFP's packing expenses from IFP's 2002-2003 financial statements in the calculation of SG&A in these preliminary results and in the WBF Investigation. Meikangchi argues that classifying packing materials as an SG&A expense double counts the expense because the Department is applying the surrogate SG&A ratio to Meikangchi's MLE and then adding the company's packing materials, labor, and energy into the calculation. Meikangchi contends that the Department should remove IFP's 2004-2005 packing materials expense from the SG&A calculations.

No other parties commented on this issue.

Department's Position: The Department did exclude packing materials expenses in calculating SG&A using IFP's 2002-03 financial statements for the WBF Investigation, but did not exclude IFP's 2004-2005 packing materials expenses from its calculation of the SG&A ratio for the preliminary results. We agree that classifying packing materials as SG&A double counts the SG&A expense because the SG&A ratio has already been applied to the respondents' cost of manufacturing. Therefore, for the final results, we have excluded IFP's packing materials expense from the 2004-2005 financial statements in calculating IFP's SG&A ratio. See Factor Valuation Memorandum.

Comment 14: Reclassification of “Diesel & Petrol” Expense as Selling, General, and Administrative Expense

Petitioners argue that if the Department determines to use Jayaraja’s incomplete financial statements, it should correct its preliminary treatment of “Diesel & Petrol” in the energy portion of MLE. Petitioners argue that Jayaraja included “Diesel & Petrol” in SG&A expenses. Therefore, Petitioners assert that the Department should include the “Diesel & Petrol” charges in SG&A and not in the energy portion of MLE.

Landmark contends that the Department has properly treated “Diesel & Petrol” as energy rather than SG&A. According to Landmark, the Department has consistently treated “Diesel & Petrol” in Indian companies’ financial statements as energy rather than SG&A, and there is no other evidence to suggest otherwise for Jayaraja.

Department’s Position: Because we have determined not to use Jayaraja’s financial statements, the classification of “Diesel & Petrol” charges is moot. See Comment 2.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of these reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)